

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Derrick Mahoney and Valesia Mahoney,) Case No. 6:22-cv-03916-DCC
)
Plaintiffs,)
)
v.) **ORDER**
)
)
Nationstar Mortgage d/b/a Mr. Cooper,)
MERS Inc. d/b/a Orion Lending, Finkel)
Law Firm, Thomas Shook, Orion d/b/a)
American Financial Network Inc.,)
)
Defendants.)
)

This matter is before the Court on Plaintiffs' Amended Complaint. ECF No. 38.

Plaintiffs are non-prisoners proceeding pro se and they paid the full filing fee. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), (D.S.C.), this matter was referred to United States Magistrate Judge Kevin F. McDonald for pre-trial proceedings and a Report and Recommendation ("Report"). On October 12, 2023, the Magistrate Judge issued a Report recommending that this action be dismissed without prejudice, without leave to amend, and without issuance and service of process. ECF No. 43. The Magistrate Judge advised Plaintiffs of the procedures and requirements for filing objections to the Report and the serious consequences for failing to do so. Plaintiffs filed objections. ECF No. 49.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final

determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

Plaintiffs filed a document labeled “Plaintiff’s Response to Magistrate Report & Recommendation; Motion for Permission to File New Complaint.” ECF No. 49. The Court has considered this to be objections to the Report. Within the objections, Plaintiffs state that “[t]he Plaintiff hereby waives his objections to the Magistrates’ R&R. However and respectfully, Plaintiff seeks permission to file a new Complaint against Nationstar Mortgage LLC Dba Mr. Cooper. The new Complaint to be upon Complete Diversity jurisdiction.” *Id.*

In light of the ruling on the motion to amend, the Court turns to the Magistrate Judge’s Report. While Plaintiffs have specifically waived their objections, out of an abundance of caution for pro se parties, the Court has conducted a de novo review of the Report, the record, and the applicable law. Upon such review, the Court agrees with the recommendation of the Magistrate Judge.

Plaintiff's request for leave to file a second amended complaint is denied. Plaintiff has not provided a proposed second amended complaint for review. See *Davison v. Randall*, 912 F.3d 666, 690 (4th Cir. 2019), *as amended* (Jan. 9, 2019) ("Futility is apparent if the proposed amended complaint fails to state a claim under the applicable rules and accompanying standards." (quoting *Katyle v. Penn Nat. Gaming, Inc.*, 637 F.3d 462, 471 (4th Cir. 2011)). Plaintiff has already been given an opportunity to amend and has not cured the defects identified by the Magistrate Judge as explained in more detail in the Report. Therefore, while the Court recognizes that it "should freely give leave when justice so requires," there is no basis for amendment here. See Fed. R. Civ. P. 15(a)(2).

Therefore, upon review, the Court agrees with the recommendation of the Magistrate Judge and denies Plaintiffs' request for leave to file a second amended complaint. This action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.
United States District Judge

April 11, 2024
Spartanburg, South Carolina